RECENT CASES

BANKS AND BANKING—INSOLVENCY—CLAIMS—DEPOSITS.—GONYER V. WILLIAMS, 143 PAC. (CAL.) 736.—*Held,* where a bank received on deposit a check on another bank, and immediately placed the amount thereof to the credit of the depositor, although the check was not presented to, or paid by the drawee bank, until the next day, at which time the former bank was insolvent, this crediting of the amount to the depositor made the bank a general debtor, not a trustee to collect.

When the payee of a check endorses it to his bank for deposit, and sends it to his bank and it is so credited, this made a complete negotiation, with the right of the bank to charge back in case the check was not paid. *American T. & S. Bank v. Manufacturing Co.,* 150 Ill. 336.

But when the bank becomes a purchaser of the check, it is a debtor and has no right to charge back. *Taft v. National Bank,* 172 Mass. 363; *Walton v. Riverside Bank,* 60 N. Y. Supp. 519.

When a bank gives to one of its depositors credit on his pass book for checks drawn on it by another of its depositors, having on its books ample funds to pay them, such credit is equivalent to a payment in cash. *Bryan v. Bank,* 205 Pa. 7. But if the funds are insufficient, it may charge back the amount of the check. *Ocean Park Bank v. Rogers,* 92 Pac. (Cal.) 879; *Contra. Addie v. National Bank,* 45 N. Y. 735; *Bank v. Bank,* 129 App. Div. (N. Y.) 540, 121 N. Y. Supp. 892.

But if the amount has never been credited on the books, though the depositor was notified that it was, this does not amount to making the bank a debtor. *Bank v. Bank,* 141 App. Div. (N. Y.) 475; *National Gold Bank & Trust Co. v. McDonald,* 51 Cal. 64, *semble.*

Checks deposited with a bank and credited in the depositor's pass book are taken for collections and not for cash, whether the check is drawn on the same bank or another. *Bank v. McDonald,* 51 Cal. 64; *Rapp v. Bank,* 136 Pa. 426. *Contra, Jaffee v. Weld,* 132 N. Y. Supp. 505; *Lyons v. Bank,* 135 N. Y. Supp. 121.

BILLS AND NOTES—HOLDER FOR VALUE—DEPOSIT CREDIT ENTRY.—WILLIAMSON BANK & TRUST CO. V. MILES, 169 S. W. (ARK.) 368.—*Held,* that a bank purchasing a note in good faith, and giving the seller credit on account, becomes thereby a bona fide holder for value, although no draft or payment has been made against the credit.

The payment for deposited paper by transfer of credit to the account of another at the order of the depositor is universally held to cut off the equities of prior parties to the instrument. *City Deposit Bank Co. v. Green,* 130 Iowa 384. The relinquishment of old security is sufficient payment of value with reference to the paper substituted. *Allentown Nat. Bank v. Clay Product Supply Co.,* 217 Pa. 128. So long, however, as the item of deposit merely stands as a credit entry without set-off on the depositor's account, the bank is not, by the decisive weight of American authority, a holder for value. *First Nat. Bank v. McNairy,* 122 Minn. 255; *Nat. Bank v. Foley,* 54 Misc. Rep. (N. Y.) 126; *Queen*

City Savings Bank & Trust Co. v. Reyburn, 163 Fed. 597. Nor is sufficient value given if a depositor is permitted, merely as a favor, to draw against an item deposited for collection. *Fayette Nat. Bank v. Summers,* 105 Va. 689. If, however, a regular deposit is once drawn upon before notice of defects, the bank's position is not altered by the subsequent restoration of the depositor's credit. *Morrison v. Farmers' & Merchants' Bank,* 9 Okla. 697. These views have been incorporated into the Negotiable Instruments Law, Sections 25 and 191, limited by Section 54. Binding undertakings, although executory, other than for the payment of money, appear to be sufficient value. *Phoenix Insurance Co. v. Church,* 81 N. Y. 226; *Brooklyn, etc. R. Co. v. Nat. Bank of the Republic,* 102 U. S. 25; *Currie et al. v. Misa,* 10 L. R. Exch. Cas. 153. A very scanty number of English and American authorities are in accord with the principal case. *Ex parte Richdale,* 19 Ch. D. 409; *Wheeler v. First Nat. Bank of Battle Creek,* 3 Tex. App. Civ. Cas., Sec. 153.

CARRIERS—LIABILITIES FOR INJURIES—OWNER OF ELEVATOR.—WILMARTH V. PACIFIC MUTUAL LIFE INSURANCE CO. OF CALIFORNIA, 143 PAC. (CAL.) 780.—*Dictum:* The responsibility of the owner of an elevator for injury to a passenger is analogous to that of a common carrier.

That the circumstances surrounding the owner of an elevator and the common carrier are analogous is evident when we consider that the safety and lives of those who avail themselves of either of these means of carriage must of necessity be intrusted in a great measure to the care of those who control and operate the cars. The law, recognizing this analogy, places similar duties upon both.

A common carrier is not an insurer of the safety of its passengers. *Thorson v. Groton and S. St. Ry. Co.,* 85 Conn. 11; *Keeley v. City Electric Ry. Co.,* 133 N. W. (Mich.) 1085. But it is bound to exercise the highest degree of care and diligence which is reasonably practicable under the circumstances. *Colorado Springs and Interurban Ry. Co. v. Allen,* 135 Pac. (Colo.) 790; *Austin v. Washington Water Power Co.,* 123 Pac. (Wash.) 775; *Indianapolis Southern R. Co. v. Tucker,* 98 N. E. (Ind.) 431.

One owning and controlling a building equipped with passenger elevators is not an insurer of the safety of the passengers. *Munsey v. Webb,* 37 App. D. C. 185; *Tippecanoe Loan & Trust Co. v. Jester,* 101 N. E. (Ind.) 915. But he must exercise the highest skill and foresight consistent with the efficient operation of the elevator. *Putnam v. Pacific Monthly Co.,* 136 Pac. (Ore.) 835; *Cubbage v. Estate of Conrad Youngerman,* 134 N. W. (Iowa) 1074; *Howard v. Scarritt Estate Co.,* 161 Mo. App. 552.

The analogy drawn in the dictum of the principal case has been definitely recognized in *Grimmel v. Boyd,* 142 N. W. (Neb.) 893, and in *Helmly v. Savannah Office Building Co.,* 79 S. E. (Ga. App.) 364 (construction of "common carrier" in a statute). (*Seaver v. Bradley,* 179 Mass. 329 is *contra* as to construction of a similar statute.) And this is the prevailing doctrine. *Cooley on Torts* (*Student's Ed.*), 663, and cases cited; *Hutchinson on Carriers,* Vol. 1, page 94, and cases